

IN THE COURT OF DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE NO.01,
KODAIKANAL, DINDIGUL DISTRICT
Present: Thiru. M.Selvam, B.A., B.L.,
District Munsif Cum Judicial Magistrate No.01, Kodaikanal
Friday, this the 06th day of December 2024

I.A.No. 257 of 2021
in
O.S. No. 131 of 2011
(CNR No. TNDG11-000155-2011)

Sagayam

...Petitioner/Defendant

-Vs-

1. P.B. Suresh Palraj
2. Carolin

...Respondents/Plaintiffs

This petition is heard in the presence of Mr. C.S.Ravichandran., B.L., the Learned counsel for the Petitioner/Defendant and Mr. I. Sam Jegan., B.L., the Learned counsel for the Respondents/Plaintiffs. Enquiry heard, written arguments perused and having stood over for consideration till this day, this court delivered the following,

ORDER

Petition filed by the Petitioner/Defendant under Order 7 Rule 11 (D) and Section 151 of CPC to reject the plaint in O.S.No. 131 of 2011 on the file of this court.

1. Brief facts in the petition filed by the petitioner is as follows:

1.1. The petitioner is the defendant in the original suit. The plaintiff had stated in the plaint that plot no. 161 was belongs to their father One named Baskaran and who has sold the same to One Nithin sha under a

registered sale deed dated 16.09.1998. The plaintiffs have not been stated that their father how had acquired the suit property . The 1st plaintiff had purchased the said property from his brother in law through his power agent One P.Sethumani under a registered sale deed dated 03.06.2009 by creating a fabricated document to grab the National Highways property. The said Nitihn Sha is the 1st plaintiff's father's 2nd wife's son. The plaintiff's father said Baskaran was converted as Hindu and changed his name as Palanisamy. These all are relatives and they had joined together and created fabricated documents to establish as the 1st plaintiff is the owner of the alleged plot no. 161.

1.2. The petitioner had denied the title and long term possession and enjoyment of the 1st plaintiff in respect of plot no. 167 and no patta has been given by the Tashildar, Kodaikanal based on his long standing possession. The 1st plaintiff had created fabricated patta and pledged the suit property in plot no. 167. The property claimed by the 1st plaintiff under patta no. 167 was originally assigned to One Arokiya Mary in survey no. 8/10 to an extent of 0.00.48. In so far, the plot no. 167 is concern, the plaintiff have no right or title over the same. The plaintiffs have created fabricated revenue records. The cause of action is innovative and only with an intent to file this suit.

1.3. There is a cloud upon their title and the suit properties are partly belonged to One Arokiya Mary and the rest of the part belongs to the National High Ways Department and Government Poramboke. Therefore, there relief of bare injunction sought by the plaintiffs are not legally maintainable. The plaintiffs have suppressed all the real material facts and

approached this court with tainted hands. Hence, this suit is liable to be rejected.

2. Brief facts in the counter filed by the respondents is as follows:

2.1. The respondents/plaintiffs denied the allegations made by the petitioner in his petition. The allegations made by the petitioner in his plaint is incorrect and untrue and defamatory. The respondents never indulged in any fabrication or fraud. Even in the case of plea of fabrication or fraud taken by the defendant in his written statement or affidavit, the plaint cannot be rejected. After the respondents application to receive additional documents, the defendant was hesitant to face trial as he has no ground to defend the suit and had filed this untenable petition.

2.2. The respondents had also filed a petition to appoint an advocate commissioner and the same was allowed by this court. During the commission inspection there was no finding that the plaintiffs had encroached the highways road. The plaintiff has the right to choose against whom he has to file the suit. There is no national highway paved in Kodaikanal. The allegation regarding the availability of road access is not true and only on illusion of the petitioner. The truthfulness of the cause of action can be decided only after the trial. Merely because some troublesome persons denied the title, the person acquired title need not be compelled to file the suit for declaration. Hence, this petition is liable to be rejected.

3. No oral and documentary evidence on either side.

4. Point For Consideration:-

(i) Whether the plaint in O.S.No. 131 of 2011 has to be rejected under Order 7 Rule 11 CPC on the grounds raised by the petitioner ?

5. Both side rival submissions heard with regard to their pleadings and perused the materials on record. The suit in O.S.No. 131 of 2011 was filed by the respondents/plaintiffs as against the petitioner/defendant for the relief of permanent injunction restraining the petitioner/defendant or his men and agents in any way trespassing into the suit property. The petitioner/defendant had filed this petition to reject the plaint on certain grounds raised by him. The suit property herein is the land measuring about 6 cents comprised in Ward 'D' Block 18 and in T.S.No. 8 part known as Plot no. 167 and Plot No. 161 in survey no. 8/327 and 8/328 including survey no. 41/4, old patta no. 392 and the new patta no. 350 together with the house therein.

6. The contention of the petitioner/plaintiff in his petition is that the 1st plaintiff had created a fabricated patta as if he had obtained from the Tahsildar, Kodaikanal in respect of the suit property with forged seal in the year 1998. There is no possibility to obtain patta by the 1st plaintiff in respect of the plot no. 167 in the year 1978 as such he was born on 04.03.1972 and he was only 6 years at the time of granting the patta. At the outset, it is pertinent to note here, that it is well settled that at the time of deciding the application to reject the plaint that the court has to taken into consideration the plaint averments and the documents filed along with it and not as per the defendant's projection. The above contention put forth by the petitioner/defendant is factual matrix, which has to be decided after considering the oral and documentary evidence on either side.

7. As already stated supra, the suit has been filed in respect of the properties in plot no. 161 and 167. The petitioner/defendant's contention is that the patta for the suit property in plot no. 167 alone was issued in the year 1978 in favour of the 1st plaintiff, when he was at the age of 6 years. No where in the plaint, it was averred that the patta for the plot no. 167 was issued to the 1st plaintiff in the year 1978. There was no contention on the side of the petitioner/defendant in respect of the property in plot no. 161 in this regard. It is further well settled that the plaint cannot be rejected in part under Order 7 Rule 11 of CPC, which was observed by Our Hon'ble Supreme Court in the case of Kum. Geetha and others vs Nanjundaswamy and others in CIVIL APPEAL No. 7413 of 2023. Therefore, the above contention of the petitioner/defendant is not having a considerable force.

8. It is the further contention of the petitioner/defendant that the suit ought to have been filed for the relief of declaration as against the Government, National Highway Authority and One Arokiyamy to whom the suit property was assigned and hence, this suit is bad for non-joinder of necessary parties and for not seeking the relief of declaration. It is well settled that the plaint cannot be solely rejected on the ground of non-joinder of necessary parties. Further, whether the above parties are necessary to the suit proceedings or not can only be decided after the considering the oral and documentary evidence let in by either side.

9. In the context that the suit has to be filed for the relief of declaration, the learned counsel for the respondent/plaintiff had relied on the observation of Our Hon'ble Madras High Court in the case of PRajkumar and others vs Mary Saroja reported in 2013 (2) MWN (Civil) 89, wherein their Lordships had held as follows,

"According to me, whether the plaintiff has got title over the property or the defendants have got title over the property can be considered only during trial and even assuming that the plaintiff has no title over the property, the same has to be established by the respondent before the trial court and along with the plaint, the plaintiff has filed the mortgage deed dated 27.10.2004 executed by her husband in favour of one Selvaraj and the plaintiff has traced her title to the suit property in the plaint and whether the title traced by the plaintiff is legally acceptable one or not can be considered only during trial. Therefore, on that ground, the plaint cannot be rejected"

The relied judgment squarely applicable to the present case on hand. The respondents/plaintiffs herein had also filed the documents like sale deed in respect of the plot no. 161 in the favour of the 1st plaintiff and also the patta in the name of the plaintiffs in respect of the suit properties. Such being the position, the title of the suit properties, if necessary, can be only decided during the trial. Therefore, the above contention of the petitioner/defendant to this effect is also liable to be rejected.

10. The learned counsel for the petitioner/defendant had contended that the plaint does not disclose the cause of action and hence, for the same too, it is liable to be rejected. In the plaint averments, it has been averred that the respondents/plaintiffs are being in possession of the suit properties on the basis of a sale deed in favour of the 1st plaintiff dated 03.06.2009 and also on the basis of the patta issued in their names. It was averred in the plaint, that on 08.08.2011, the defendant had attempted to trespass into the suit property and the same was avoided by the timely intervention of the 1st plaintiff. It was further averred in the plaint that the defendant had also challenged that he will continue his illegal attempts of trespass into the suit plots.

11. In the context, the learned counsel for the respondent/plaintiff had relied on the observation of Our Hon'ble Madras High Court in the case of Loom Tex Exports, Chennai and others vs Thanneer Panthal Dharma Chathiram, Karur and another reported in 2020 (1) CTC 275, wherein their Lordships had held as follows,

"it is enough if the plaint averments and documents relied upon discloses some cause of action and it is not necessary that such averments are sufficient enough to prove the facts stated therein, for the purpose of obtaining the relief claimed in the suit. So long as the claim, discloses some cause of action or raise some questions fit to be decided by a Judge, that is enough to proceed further with the suit and a plaint cannot be rejected on the ground that it does not disclose the cause of action"

The relied judgment squarely applicable to the present case on hand. This court forms opinion that the above pleadings put forth in the plaint is enough to proceed with the case and to render a findings with regard to issue raised therein. Therefore, considering the overhaul discussion, this court is of view that the rejection of plaint in O.S.No. 131 of 2011 on the file of this court is not warranted in this case, based on the grounds raised by the petitioners.

In the result this petition is dismissed. Considering the facts and circumstances of this petition, there is no order as to cost.

This order is typed by me in my official laptop, corrected and pronounced by me in open court on this 06th day of December 2024.

District Munsif cum Judicial Magistrate No.I,
Kodaikanal.

Both side witnesses and documents : Nil

**District Munsif cum Judicial Magistrate No.I,
Kodaikanal.**

**District Munsif cum
Judicial Magistrate Court No.01,
Kodaikanal.**

I.A.No. 257 of 2021

in

O.S. No. 131 of 2011

Draft/Fair/Order

Dated: 06.12.2024

